monthly tenancy. The appellant who was until 1955 the sole proprietor of a provision shop Chop Weng Chan carried on business in some part of the premises and utilised the rest of the premises for himself and members of his family for residential purposes until 1955. Soon thereafter he discontinued his business. He left for Kuala Lumpur and has been residing there ever since with his family. The appellant sublet the substantial part of the premises to under-tenants, there being apparently no restriction in the tenancy agreement to sublet nor was his tenancy determined earlier, reserving to himself a tiny room at the back of the premises. His son who is a police clerk at Tampin, P.W.1, was in the habit of visiting this room during the weekend. The room contained only a table and some old furniture of no appreciable value, and during his visits his son used to read his newspapers there for an hour or two.

The appellant continued to send the rents by post addressed from No. 7, Singapore Street, Seremban, as if he were living there. The respondent's receipts posted to the tenant were invariably returned, for the letters could not be delivered. There was no evidence that the respondent knew where he was actually living. The appellant's letter dated 13th May, 1959. forwarding his monthly rent showed his purported address to be c/o P. O. Box 78, Seremban. That, however, did not give the respondent any knowledge of the actual place of the appellant's residence, but then the respondent knew he was no longer in personal occupation.

On 5th June, 1959, the respondent forwarded by registered post to the appellant at No. 7, Singapore Street, Seremban, a notice to quit on or before 31st July, 1959. The letter was returned by the post office with the indorsement "gone away".

In the result the respondent brought this action for eviction alleging that the appellant was not in possession, but stating the facts regarding his abortive attempt to serve the notice on the appellant and contended that the notice to quit was deemed to have been served, though undelivered, on the day when the postman called at the premises with the letter.

The defence was threefold :—

(1) That the tenancy had not been determined according to law within the meaning of section 12(4) of the Control of Rent Ordinance, 1956, since it was never served.

(2) The period of notice was insufficient.

(3) The appellant, though not in actual physical occupation, continued to be in juridical possession of the premises by a member of the family, his son.

In this appeal the appellant abandoned the third ground and confined his contention to the first two grounds.

In the view I take of the first issue, it is not necessary to consider the second contention urged by the appellant. Had the notice to quit been served according to law one calendar month from the date of the determination of the tenancy, it would have been sufficient in law. The prerequisite condition for determination of a periodical monthly tenancy, whether it is in respect of premises under the Control of Rent Ordinance or outside of it, is a valid and sufficient notice to quit. That must be determined by the Common Law for there is no statutory provision regulating the length of notice and mode of service.

That a letter has been posted and unreturned is *prima facie* but not conclusive evidence of service — see *Gresham Howes Estate Co.* v. *Rossa Grand Gold Mining Co.*[1] In this case, however, the appellant did not personally occupy the premises and the presumption of service was rebutted by the indorsement by the postal peon's certificate "gone away".

I am of the opinion that there is no valid determination of the tenancy. In *Hogg* v. *Brooks*,[2] it was held that where the tenant could not be found, neither the written notice sent by post to his last known address returned undelivered nor the notice served upon the under-tenant is sufficient.

The appeal must be allowed with costs here and below.

Appeal allowed.

Solicitors: *Joseph & Son; Lovelace & Hastings.*

KWONG CHUN HEONG v. ANGLO-SWISS WATCH CO.

[A.C.J. (Chua J.) May 12, 1961]

[Singapore — District Court Appeal No. 25 of 1960]

Landlord and tenant — Space in the wall — Whether tenancy of floor includes external wall.

The respondent in this appeal sought possession of that portion of the external wall of the ground floor of No. 64 High Street in which is a built-in show-case which the appellant uses for the display and sale of costume jewellery. Counsel for the appellant contended: (a) that the show-case was part and parcel of the first floor for over 30 years and that when the first floor was sublet the space occupied by the show case on the ground floor was also included; (b) that even if there is no tenancy there is a licence coupled with a tenancy and that it can only be revoked by the landlord who gave the licence; and (c) that since the respondent and the landlord knew that the show-case was used by some other person when the tenancy was granted to the respondent, the tenancy granted to the respondent did not include the space occupied by the show-case.

Held: there was no evidence that the landlord granted to the tenant of the first floor a tenancy or a licence to use the space in the wall on the ground floor. The appellant had only a bare licence and the respondent is entitled to bring this action.

DISTRICT COURT APPEAL.

J. F. McWilliams for the appellant.

F. B. de Souza for the respondent.

Cur. Adv. Vult.

Chua J.: The claim in this action is for possession of that portion of the external wall of the ground floor of No. 64 High Street, fronting High Street, in which is a built-in show-case which the appellant uses for the display and sale of costume jewellery. The show-case is about 5 ft. by 4 ft. and intrudes 1½ ft. into the ground floor.

The facts of this case are shortly these. The premises in question is a two-storeyed building situated at the corner of High Street and North Bridge Road. The respondent is the present tenant of the ground floor and the chief tenant of the first floor is a dentist, Yang Wei, who sub-lets part of the first floor to the Singa Photo Studio. The history of the premises is that as far back as 1920 the first floor was occupied by a Japanese photographer, who exhibited his photographs in two show-cases in the wall in question on the ground floor, which was occupied by another tenant. In 1932 the dentist became the chief tenant of the first floor. Before that the chief tenant of the first floor was a Chinese photographer. When the dentist became the chief tenant he sold the photographic business in 1932 to the Singa Photo Studio and rented out part of the first floor to the Studio, which continued to use the remaining show-case in the wall in question on the ground floor for the display of photographs. In June, 1958, the appellant was granted the use of this show-case by his brother, the managing partner of Singa Photo Studio, to sell costume jewellery, and he has been doing this business at this show-case ever since. The learned District Judge found that the defendant was in sole charge of this jewellery business though he was financed in this business by his brother who had a share in the profits.

It is not in dispute (1) that at no time was separate rent paid for the use of the wall in question and (2) that the respondent was aware of the existence of the show-case before it became the tenant of the ground floor and that the show-case was used by the appellant in his business.

On those facts the learned District Judge was of the opinion that whatever right the appellant had in this wall was a right which was assigned to him by Singa Photo Studio and that "such a right can at the very best amount to, and I hold it to be, a mere licence terminable at will" and he gave judgment for the respondent.

Counsel for the appellant contends that the show-case in question has been part and parcel of the tenancy of the first floor for over 30 years and that when the dentist sub-let a portion of the first floor, together with the use of the show-case on the ground floor, to the Singa Photo Studio, the Studio became the tenant not only of that part of the first floor sub-let to it but also the space occupied by the show-case on the ground floor.

Counsel further contends that even if there is no tenancy then there is a licence to use the show-case which is coupled with the tenancy of the first floor and the licence can only be revoked by the landlord who gave the licence. Counsel submits that, as the space in the wall is a part of the tenancy of the first floor, and as both the respondent and the landlord knew at the time the tenancy of the ground floor was granted to the respondent that the show-case was there and in use by some other person, the tenancy granted to the respondent by the landlord did not include the space occupied by the show-case. Counsel further submits that, alternatively, if there is only a licence coupled with a tenancy, the respondent took the ground floor subject to this licence.

With all due respect to counsel I am unable to agree with his submissions. Where is the evidence that the landlord of the whole of the premises granted to the tenant of the first floor the tenancy of this space in the wall of the ground floor which as far back as 1920 was let out to a separate tenant? There is no such evidence whatsoever. At no stage in the history of this premises was the tenant of the first floor ever also the tenant of the ground floor. How, in the absence of any evidence of a grant by the landlord to the tenant of the first floor of the tenancy of the space in the wall in the ground floor and in the face of the evidence of the landlord that he received no payment in respect of this space in the wall, can it be held that this space in the wall on the ground floor forms part of the tenancy of the first floor? In my view it cannot be so held.

Further, where is the evidence that the landlord granted the tenant of the first floor the licence to use the space in the wall on the ground floor? The mere fact that the landlord had not objected to the use of this space by the tenant of the first floor is no evidence that the landlord granted a licence. There is no evidence of an express grant of a licence by the landlord. From the evidence it appears that this space in the wall has been used and occupied without objection from the landlord and from the tenants from time to time of the ground floor. Furthermore, how can the occupation and use of this space on the ground floor be coupled with an interest which is on the first floor? In my view the finding of the learned District Judge is correct that all that the appellant has is a bare licence. The respondent in my view became the tenant of the whole of the ground floor including the space in the wall in which the show-case used by the appellant is, and that being the case the respondent is entitled to bring this action against the appellant who is in actual occupation of the space and paying no rent to the respondent.

For these reasons the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *P. T. Wong & Co.; De Souza & De Souza.*